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9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12
Plaintiff,
13
v.
14 TIRSO GARCIA-VALDEZ,
MISAEEL GARCIA CARRANZA, and
15 BRENDA CARMONA-VENEGAS,
16
Defendants.
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CASE NO. 1:20-CR-00044-DAD-BAM
STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
AND ORDER
CURRENT DATE: January 27, 2021
TIME: 1:00 p.m.
PROPOSED DATE: April 28, 2021
COURT: Hon. Barbara A. McAuliffe

18 This case is set for status conference on January 27, 2021. On May 13, 2020, this Court issued
19 General Order 618, which suspends all jury trials in the Eastern District of California until further
20 notice, and allows district judges to continue all criminal matters. This order, and previous and
21 subsequent General Orders were entered to address public health concerns related to COVID-19.

22 Although the General Orders address the district-wide health concern, the Supreme Court has
23 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive
24 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.
25 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no
26 exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
27 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
28 judge ordering an ends-of-justice continuance must set forth explicit findings on the record "either orally

1 or in writing”).

2 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
3 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice
4 continuances are excludable only if “the judge granted such continuance on the basis of his findings that
5 the ends of justice served by taking such action outweigh the best interest of the public and the
6 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless
7 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the
8 ends of justice served by the granting of such continuance outweigh the best interests of the public and
9 the defendant in a speedy trial.” *Id.*

10 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
11 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
12 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
13 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
14 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
15 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
16 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
17 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
18 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

19 In light of the societal context created by the foregoing, this Court should consider the following
20 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
21 justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date
22 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
23 pretrial continuance must be “specifically limited in time”).

24 STIPULATION

25 Plaintiff United States of America, by and through its counsel of record, and defendant TIRSO
26 GARCIA-VALDEZ, by and through defendant’s counsel of record, Mark Broughton, defendant

27 ¹ The parties note that General Order 612 acknowledges that a district judge may make
28 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

MISAEEL GARCIA-CARRANZA, by and through defendant's counsel of record, Roger Wilson, and defendant BRENDA CARMONZ-VENEGAS, by and through defendant's counsel of record, Charles Lee, hereby stipulate as follows:

1. By previous order, this matter was set for status on January 27, 2021.

2. By this stipulation, defendants now move to continue the status conference until April 28, 2021, and to exclude time between January 27, 2021, and April 28, 2021, under Local Code T4.

3. The parties agree and stipulate, and request that the Court find the following:

a) The government has represented that the discovery associated with this case includes over 60 audio and video recordings and over 1,000 pages of Bates stamped discovery. All of this discovery has been either produced directly to counsel and/or made available for inspection and copying.

b) Counsel for defendants desire additional time to consult with their clients, to review the current charges, to conduct investigation and research related to the charges, to review and copy discovery for this matter, to discuss potential resolutions with their clients, to prepare pretrial motions, and to otherwise prepare for trial.

c) Counsel for defendants believe that failure to grant the above-requested continuance would deny them the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

d) The government does not object to the continuance.

e) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.

f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of January 27, 2021 to April 28, 2021, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: January 15, 2021

McGREGOR W. SCOTT
United States Attorney

/s/ ANGELA SCOTT
ANGELA SCOTT
Assistant United States Attorney

Dated: January 15, 2021

/s/ per email authorization
MARK A. BROUGHTON
Counsel for Defendant
TIRSO GARCIA-VALDEZ

Dated: January 15, 2021

/s/ per email authorization
ROGER WILSON
Counsel for Defendant
MISAEEL GARCIA-
CARRANZA

Dated: January 15, 2021

/s/ per email authorization
CHARLES LEE
Counsel for Defendant
BRENDA CARMONA-
VENEGAS

ORDER

IT IS SO ORDERED that the status conference is continued from January 27, 2021, to **April 28, 2021, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe**. Time is excluded pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv).

IT IS SO ORDERED.

Dated: January 15, 2021

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE